

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TANUS CABINETS DESIGNS, INC., a)
Nevada Corporation,)
Plaintiff,)
vs.)
CENTRAL TRANSPORT, LLC, d/b/a)
CENTRAL TRANSPORT, a Limited Liability)
Company; BLUE GRACE LOGISTICS, LLC,)
a Limited Liability Company; and DOE)
CORPORATIONS I through XX,)
Defendants.)
)
Case No.: 2:14-cv-00059-GMN-VCF
ORDER

Pending before the Court is the Motion to Dismiss (ECF No. 5) filed by Defendant Central Transport, LLC (“Defendant”). Plaintiff Tanus Cabinets Designs, Inc. (“Plaintiff”) filed a Response (ECF No. 8), and Defendant filed a Reply (ECF No. 9).

I. BACKGROUND

In 2013, Plaintiff hired Blue Grace Logistics, LLC (“Blue Grace”) to deliver a cosmetics kiosk via ground service from Las Vegas, Nevada to a mall in Providence, Rhode Island. (Compl. ¶ 6, ECF No. 1-1.) Blue Grace then hired Defendant to pick up and deliver the kiosk, but the shipment was rejected and Defendant transported it to Connecticut and then to Ohio. (*Id.* ¶¶ 7–9.) After locating the kiosk in Ohio, Plaintiff instructed Blue Grace to send it back to the mall in Rhode Island, where it allegedly arrived “completely destroyed.” (*Id.* ¶ 10.)

Plaintiff filed suit in the Eighth Judicial District Court seeking damages for breach of contract; breach of covenant of good faith and fair dealing; unjust enrichment; negligent supervision, hiring, and retention; and negligence. (*Id.* ¶¶ 15–40.) Defendant subsequently filed a Notice of Removal (ECF No. 1) to this Court and the instant Motion to Dismiss in which

1 Defendant seeks dismissal of Plaintiff's state law claims (ECF No. 5). Specifically, Defendant
2 claims that Plaintiff's state law claims are fully preempted by the Carmack Amendment to the
3 Interstate Commerce Act, 49 U.S.C. § 14706. (Mot. to Dismiss 1:24–26, ECF No. 5.)

4 **II. LEGAL STANDARD**

5 Federal Rule of Civil Procedure 12(b)(6) mandates that a court dismiss a cause of action
6 that fails to state a claim upon which relief can be granted. *See N. Star Int'l v. Ariz. Corp.*
7 *Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983). When considering a motion to dismiss under Rule
8 12(b)(6) for failure to state a claim, dismissal is appropriate only when the complaint does not
9 give the defendant fair notice of a legally cognizable claim and the grounds on which it rests.
10 *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In considering whether the
11 complaint is sufficient to state a claim, the Court will take all material allegations as true and
12 construe them in the light most favorable to the plaintiff. *See NL Indus., Inc. v. Kaplan*, 792
13 F.2d 896, 898 (9th Cir. 1986).

14 The Court, however, is not required to accept as true allegations that are merely
15 conclusory, unwarranted deductions of fact, or unreasonable inferences. *See Sprewell v. Golden*
16 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). A formulaic recitation of a cause of action
17 with conclusory allegations is not sufficient; a plaintiff must plead facts showing that a
18 violation is *plausible*, not just possible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing
19 *Twombly*, 550 U.S. at 555).

20 If the court grants a motion to dismiss, it must then decide whether to grant leave to
21 amend. The court should “freely give” leave to amend when there is no “undue delay, bad
22 faith[,] dilatory motive on the part of the movant . . . undue prejudice to the opposing party by
23 virtue of . . . the amendment, [or] futility of the amendment” Fed. R. Civ. P. 15(a); *Foman*
24 *v. Davis*, 371 U.S. 178, 182 (1962). Generally, leave to amend is only denied when it is clear
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1 that the deficiencies of the complaint cannot be cured by amendment. *See DeSoto v. Yellow*
 2 *Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992).

3 **III. DISCUSSION**

4 **A. Carmack Amendment Completely Preempts Plaintiff's State Law Claims**

5 In its Motion to Dismiss, Defendant argues that Plaintiff's state law claims are
 6 completely preempted by the Carmack Amendment. (Mot. to Dismiss 1:24–26, ECF No. 5.)

7 The wide-ranging Carmack Amendment, 49 U.S.C. § 14706, provides ““a uniform
 8 national liability policy for interstate carriers”” under receipts and bills of lading. *Hall v. N. Am.*
 9 *Van Lines, Inc.*, 476 F.3d 683, 687 (9th Cir. 2007) (quoting *Hughes Aircraft Co. v. N. Am. Van*
 10 *Lines, Inc.*, 970 F.2d 609, 613 (9th Cir. 1992)). The Ninth Circuit has already held that the
 11 Carmack Amendment is a complete defense to well-pleaded state law claims “alleging all
 12 manner of harms,” including “contract claims alleging delay, loss, failure to deliver or damage
 13 to property.” *Id.* at 688–89¹; *see also Coughlin v. United Van Lines, LLC*, 362 F. Supp. 2d
 14 1166, 1168 (C.D. Cal. 2005) (granting defendant's motion to dismiss plaintiff's state law
 15 claims because “[a]ll Circuit Courts of Appeal, including the Ninth Circuit, have held that
 16 Carmack's broad scope preempts all state law claims, whether they contradict or supplement
 17 Carmack remedies”). Further, Carmack ““provides the exclusive cause of action for the claim
 18 asserted and also sets forth procedures and remedies governing that cause of action.”” *Hall*, 476
 19 F.3d at 687 (quoting *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 8 (2003)).

20 Here, the only argument Plaintiff presents to Defendant's preemption defense is that the
 21 Carmack Amendment is waived because Plaintiff failed to sign the bill of lading and
 22 Defendants failed to initial the bill where indicated. (Resp. 8:1–11, ECF No. 8.) This argument
 23 fails, however, because Plaintiff presents no case law—and the Court on its own independent

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25 ¹ In *Hall*, the Ninth Circuit also held that, because “the Carmack Amendment completely preempts a contract
 claim alleging loss or damage to property,” such a “completely preempted contract claim presents a federal
 question.” 476 F.3d at 688–89.

1 review has found no case law—that supports the proposition that a missing signature and/or
2 initials on a bill of lading constitutes a waiver of the Carmack Amendment. The bill of lading
3 itself lacks any indication that both parties agreed to waive their rights and remedies under the
4 Carmack Amendment. *See* 49 U.S.C. § 14101(b)(1) (providing that shippers and carriers may
5 waive the Carmack Amendment remedies if they do so with express language in writing).

6 Because Plaintiff's state law claims fall within the ambit of the Carmack Amendment,
7 and because the \$10,000 amount-in-controversy jurisdictional requirement in the Carmack
8 Amendment is satisfied, the Court hereby grants Defendant's Motion to Dismiss. *See* 28 U.S.C.
9 § 1337(a) ("[T]he district courts shall have original jurisdiction of an action brought under [the
10 Carmack Amendment], only if the matter in controversy for each receipt or bill of lading
11 exceeds \$10,000, exclusive of interest and costs."); (Compl. ¶¶ 25, 31, 36, 40, ECF No. 1-1).

12 **B. Leave to Amend**

13 In its Response, Plaintiff requests that it be granted leave to amend its Complaint to
14 comply with Carmack preemption. (Resp. 8:14–23, ECF No. 8.) Rule 15(a)(2) of the Federal
15 Rules of Civil Procedure permits courts to "freely give leave [to amend] when justice so
16 requires." Fed. R. Civ. P. 15(a)(2). Furthermore, the Supreme Court requires courts to grant
17 leave to amend when there is no "undue delay, bad faith[,] dilatory motive on the part of the
18 movant . . . undue prejudice to the opposing party by virtue of . . . the amendment, [or] futility
19 of the amendment . . ." *Foman v. Davis*, 371 U.S. 178, 182 (1962). Because the Court cannot
20 find that amendment would be futile and finds no evidence of undue delay, bad faith, or
21 dilatory movant, the Court grants Plaintiff leave to amend its Complaint to state a claim under
22 the Carmack Amendment for actual damage to the kiosk through interstate transport by
23 Defendant under a bill of lading. *See* 49 U.S.C. § 11706, 14706; *Coughlin*, 362 F. Supp. 2d at
24 1170. Plaintiff shall file its amended complaint by Wednesday, August 13, 2014.. Failure to
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1 file an amended complaint by this date shall result in the Court dismissing Plaintiff's complaint
2 with prejudice.

3 **IV. CONCLUSION**

4 **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss (ECF No. 5) is
5 **GRANTED** without prejudice.

6 **IT IS FURTHER ORDERED** that Plaintiff shall file its amended complaint by
7 **Wednesday, August 13, 2014.** Failure to file an amended complaint by this date shall result in
8 the Court dismissing Plaintiff's Complaint with prejudice.

9 **DATED** this 30 day of July, 2014.



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11 Gloria M. Navarro, Chief Judge
12 United States District Judge
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